



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Dan Backer, Esq.
Counsel and Treasurer
STOP HILLARY PAC
203 South Union Street
Suite 300
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JUN 22 2016

RE: MUR 7086
(formerly RR 15L-29R)

Dear Mr. Backer:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission ("Commission") became aware of information suggesting that STOP HILLARY PAC and you in your official capacity as treasurer ("Respondents") may have violated the Federal Election Campaign Act of 1971, as amended ("Act"). The Commission notified Respondents of the potential violations on September 8, 2015.¹ On June 14, 2016, the Commission opened a matter under review ("MUR") and found reason to believe that Respondents violated 52 U.S.C. § 30102(e)(4), a provision of the Act. *See also* 11 C.F.R. § 102.14. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.²

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation

¹ *See* Letter from Jeff S. Jordan, Asst. Gen. Counsel, CELA, Fed. Election Comm'n, to Dan Backer, Treasurer, STOP HILLARY PAC (Sept. 8, 2015).

² The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

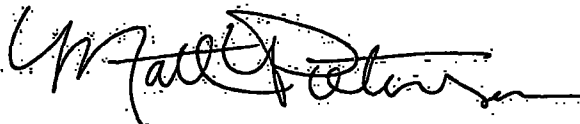
agreement in settlement of this matter, prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering as a way to resolve this matter at an early stage and without briefing the issue of whether the Commission should find probable cause to believe that Respondents violated the law.

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If you are interested in engaging in pre-probable cause conciliation, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receiving this letter. During conciliation, you may submit any materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

We look forward to your response.

On behalf of the Commission,



Matthew S. Petersen
Chair

Enclosures
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: STOP HILLARY PAC and Dan Backer MUR 7086
4 in his official capacity as treasurer
5

6 **I. GENERATION OF MATTER**

7 This matter was generated based on information ascertained by the Federal Election
8 Commission ("Commission") in the normal course of carrying out its supervisory
9 responsibilities. See 52 U.S.C. § 30109(a)(2). The Alternative Dispute Resolution ("ADR")
10 office referred STOP HILLARY PAC and Dan Backer in his official capacity as treasurer
11 ("Committee" or "Respondents") to the Office of the General Counsel ("OGC"), after the
12 Committee declined to participate in the ADR program. Respondents were referred to the ADR
13 office by the Reports Analysis Division ("RAD") for failing to remove a current federal
14 candidate's name from the name of the Committee, as required under 52 U.S.C. § 30102(e)(4).

15 Based on a review of the Referral and the Respondents' submission, the Commission
16 finds reason to believe that the Respondents violated the Federal Election Campaign Act of 1971,
17 as amended ("Act").

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. Background**

20 The Committee filed a Statement of Organization with the Commission on May 16,
21 2013.¹ The Committee is an unauthorized, nonconnected political committee and Dan Backer is
22 its treasurer. Hillary Rodham Clinton filed a Statement of Candidacy for the office of President
23 in the 2016 election cycle on April 13, 2015. On April 27, 2015, the Commission sent the

1 Committee a Request for Additional Information ("RFAI") indicating that unless it was
2 authorized by the candidate, it would have to remove the candidate's name from the committee's
3 name pursuant to 52 U.S.C. § 30102(e)(4). The Committee responded on June 1, 2015, by filing
4 a Miscellaneous Electronic Submission ("FEC Form 99") indicating that it refused to change its
5 name because requiring such a name change would be an unconstitutionally overbroad
6 application of 11 C.F.R. § 102.14(a), the Commission's regulation implementing § 30102(e)(4).²
7 On June 4, 2015, a RAD analyst called Mr. Backer to inform him that if the Committee did not
8 comply with the Commission's request, the matter could be referred for further action to the
9 Commission, and that the Committee could further clarify the record if it wished. The
10 Committee did so by filing an additional FEC Form 99 on June 11, 2015, which essentially
11 reiterated its previous reasons for refusing to comply with the request.

12 On July 30, 2015, RAD referred the matter to the ADR office and the Commission
13 invited the Committee to voluntarily participate in its ADR process to resolve the issue. The
14 Committee declined to participate in ADR by submitting another FEC Form 99 on August 27,
15 2015, explaining that it did not intend to comply with the Commission's request that it remove
16 the candidate's name from the name of the Committee. The ADR office then referred the matter

¹ The Committee's original name was "Stop Hillary PAC." It filed an amended FEC Form 1 submission with the Commission on July 31, 2013, disclosing its Committee name as "STOP HILLARY PAC." RAD Referral at 4–5. The revised name, which is not an acronym, does not affect the analysis of this matter.

² The Committee also contended that its "open, aggressive, and blatantly obvious opposition" to Hillary Clinton vitiated any possible confusion that it is an authorized committee for Hillary Clinton or any other candidate. RAD Referral at 5–6. The Committee did not contend that it is an authorized committee, which is defined as "the principal campaign committee or any other political committee authorized by a candidate under section 30102(e)(1) of this title to receive contributions or make expenditures on behalf of such candidate." 52 U.S.C. § 30101(6).

to OGC for enforcement action on September 1, 2015.³ Upon receipt of the Referral, OGC provided notice to the Committee. On September 23, 2015, the Committee filed a Response which argued that § 30102(e)(4) and the Commission's regulations at 11 C.F.R. § 102.14 implementing that provision are unconstitutional, both on their face and as applied to political committees that unambiguously oppose the election of particular candidates.⁴

B. Legal Standard

The Act requires that "any political committee which is not an authorized committee . . . shall not include the name of any candidate in its name."⁵ The Commission has construed the term "name" to "include[] any name under which a committee conducts activities, . . . including a special project name." 11 C.F.R. § 102.14(a). There are several exceptions to the Commission's regulation implementing § 30102(e)(4), including one that provides: "An unauthorized political committee may include the name of a candidate in the title of a special project name or other communication if the title clearly and unambiguously shows opposition to the named candidate."⁶ There is no exception, however, allowing committee names to include the name of a declared federal candidate.⁷

³ The ADR office referred the Committee to OGC pursuant to Commission procedures to refer a matter to OGC following a respondent's refusal to participate in the ADR program.

⁴ The Committee also filed a lawsuit against the Commission in the U.S. District Court for the Eastern District of Virginia on September 22, 2015, raising essentially the same arguments it raises in its Response in this enforcement matter. *See Stop Hillary PAC v. FEC*, Case No. 1:15-cv-01208-GBL-IDD (E.D. Va.).

⁵ 52 U.S.C. § 30102(e)(4).

⁶ 11 C.F.R. § 102.14(b)(3).

⁷ The special projects exception applies only to the title of a special project or communication, such as a website or fundraising solicitation, not to a political committee's name. Advisory Op. 2015-04 at 3 (Collective Actions PAC). *See* Advisory Op. 1995-9 at 6 (NewtWatch PAC) ("The Commission concludes that the term 'NewtWatch' may not be used as part of the Committee's name. In contrast to the committee name restrictions, a candidate's name may be used in the title of a special project operated by an unauthorized committee if the project title clearly and unambiguously shows opposition to the named candidate.").

C. Discussion

The Committee does not dispute the fact that its name includes the name of a declared candidate for federal office although it is not the authorized committee of that candidate. The Committee concedes as much in its Response:

At the time [Dan] Backer prepared and filed the Statement of Organization for Stop Hillary PAC, he was aware that the PAC's name contained a reference to "Hillary," which was intended as a reference to then-Secretary of State Hillary Rodham Clinton. At that time, Backer also was aware of 52 U.S.C. § 30102(e)(4)'s prohibition on including candidate names in the names of PACs. He believed that Hillary Rodham Clinton was certain to seek the 2016 Democratic Party nomination for the office of President of the United States. Hillary Rodham Clinton officially became a candidate for the office of President of the United States on or about April 13, 2015.⁸

In short, the Committee acknowledges that its name includes the name of a current federal candidate, and that by refusing to remove candidate Hillary Clinton's name from its committee name, it is in violation § 30102(e)(4) of the Act and Commission regulations implementing that provision. Accordingly, the Commission finds reason to believe that STOP HILLARY PAC and Dan Backer in his official capacity as treasurer violated 52 U.S.C. § 30102(e)(4).

The Commission recently issued an Advisory Opinion in which it discussed § 30102(e)(4) in the context of a committee's online activities, reiterating that the "only relevant exception to the ban on using a candidate's name in the name of [a special] project or communication is . . . if the title clearly and unambiguously shows opposition to the named candidate." Advisory Op. 2015-04 at 3. In a recent lawsuit challenging this Advisory Opinion, a federal district court denied the plaintiff's motion for a preliminary injunction on the ground that the plaintiff failed to demonstrate a likelihood of success on the merits. *See Pursuing America's Greatness v. FEC*, No. 15-cv-1217, 2015 WL 5675428, at *2 (D.D.C. Sept. 24, 2015). However, neither the Advisory Opinion nor the district court litigation challenging it directly addresses the issue raised in this matter because they do not challenge the prohibition on using a federal candidate's name in a committee name.

⁸ Resp. at 4.